



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

ONE ASHBURTON PLACE, ROOM 411
BOSTON, MASSACHUSETTS 02108

MICHAEL J. SULLIVAN
DIRECTOR

TEL: (617) 979-8300
(800) 462-OCPF
FAX: (617) 727-6549

M-96-01
Issued: April 1996
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MEMORANDUM

To: Interested Parties
From: Michael J. Sullivan, Director *mjs*
Subject: Settlement of Debts

This memorandum provides guidelines for candidates and political committees which settle debts owed to corporate or other creditors for less than the amount owed. Regulations issued by this office specify that a candidate or committee may enter into an agreement with a creditor to settle such debts if a Statement of Settlement is filed with this office documenting compliance with the regulation. See 970 CMR 1.03, a copy of which is attached for information.

When documenting settlement of debts, candidates and political committees should use Form CPF S1, Statement of Settlement. The Statement should be used to reflect settlement of debts with both corporate and noncorporate creditors. The form, which may be reproduced, is attached to this Memorandum.¹

A completed Statement of Settlement must be filed within thirty days of any settlement of a liability for less than the amount owed. Since a committee with existing liabilities may not dissolve and remains subject to the campaign finance law until all debts are paid or settled, the timely filing of a Statement of Settlement is especially important when committees are in the process of winding down their activities.

The form is used to demonstrate that the settlement of a debt or debts occurred "in a commercially reasonable manner." Each requirement demonstrating such settlement is listed on the settlement form, e.g., that credit was extended in the ordinary course of business and that the committee has made commercially reasonable efforts to satisfy the debt. The form must be signed by the creditor, the candidate (if credit was extended to a candidate committee), and the treasurer of the committee.

¹ We expect that in the near future the form will be filed using the office's electronic filing system. Until then, it may be filed in paper format.



The form is not to be used to reflect settlement or forgiveness of personal loans made by a candidate to the candidate's committee. Settlement or forgiveness of personal loans made by a candidate is reflected, as an in-kind contribution, from the candidate in the campaign finance report filed by the candidate's committee for the period in which the settlement or forgiveness occurred.

In the limited circumstances where a debt has been reported as a liability by a candidate or political committee for at least six years, and the candidate or committee does not have funds to make a payment and does not expect to have such funds available, or the creditor is no longer in business or cannot be located, an affidavit may be submitted to OCPF by the candidate or treasurer, to indicate that the liability is no longer in effect. *See* 970 CMR 1.03(4) (the form to be used for the Affidavit is attached).

Please note that a committee's obligation to a creditor continues even after a creditor files for bankruptcy protection. Once a bankruptcy case is opened, payment should be made to the trustee rather than the vendor. A committee may not "write a debt off" simply because the committee has not been contacted by the trustee who is handling the bankruptcy case at issue. *See* AO-94-13.

For further information and guidance with respect to this memorandum, please contact OCPF.



Affidavit of Candidate/Treasurer with Outstanding Liabilities

CPF ID #: _____

(For Office Use)

Office of Campaign and Political Finance

Commonwealth of
Massachusetts

File with: Director
Office of Campaign and Political Finance
One Ashburton Place, Room 411, Boston, MA 02108

(617) 979-8300/(800) 462-OCPF
Fax: (617) 727-6549
ocpf@cpf.state.ma.us
www.mass.gov/ocpf

Candidate's Name: _____

Treasurer's Name:
(if applicable) _____

Committee Name:
(if applicable) _____

This affidavit is filed by a candidate/committee, in accordance with 970 CMR 1.03(4), who has been reporting the following debts for at least six years and considers those debts to no longer be in effect.

1. All liabilities of the candidate and/or the political committee listed below were incurred at least six (6) years prior to this date:

<u>Date Incurred</u>	<u>To Whom Due</u>	<u>Amount</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

2. No payments have been made for at least six (6) years to any creditors of the candidate and/or political committee which are listed above.

3. At the time the liability was incurred I/we intended that the candidate/committee would pay in full for the goods or services rendered.

4. On information and belief:

- a. credit was extended in the ordinary course of business on terms similar to those granted to other political and non-political debtors;
- b. the creditor has pursued remedies to seek payment in the it normally takes against debtors in a financial condition similar to this candidate/political committee, as the case may be; and
- c. the goods or services provided by the creditor and/or by the extension of credit made by the creditor were not intended by the creditor as an inkind contribution to the candidate or the political committee.

5. The candidate and/or political committee has/have made commercially reasonable efforts to satisfy the debt.

6. No additional payment has been made because the committee has no funds to make such payment and has no reasonable expectation of being able to make such payment in the future.

I certify that the liabilities listed above are no longer in effect:

Signed under the penalties of perjury:

Signed under the penalties of perjury:

Candidate Signature

Date: _____

Treasurer Signature (if applicable)

Date: _____

970 CMR 1.03

(1) Corporate Debts. Debts owed to business corporations or other entities subject to M.G.L. c. 55, § 8 for goods and services may not be settled by candidates or political committees other than ballot question committees for less than the amount owed unless both the business corporation or other entity subject to M.G.L. c. 55, § 8 and political committee treat the debt in a commercially reasonable manner. A corporation which settles a debt for less than the amount owed has made an in-kind contribution to the ballot question committee, and the ballot question committee must disclose the receipt of the in-kind contribution on its campaign finance reports. 970 CMR 1.03 shall not apply to a debt which is the subject of a dispute between a political committee and a creditor involving questions of satisfactory delivery of goods or services, or the amount owed. In order for a settlement of such a debt to occur all of the following requirements must be met:

- (a) Credit was extended in the ordinary course of business similar to terms granted to other political and non-political debtors.
- (b) The committee has made commercially reasonable efforts to satisfy the debt.
- (c) The creditor has pursued remedies to seek payment in the same manner it normally takes against debtors in a financial condition similar to the committee.
- (d) The settlement is similar to others the creditor has made with other debtors, and similar to settlements the committee has proposed to its other creditors.
- (e) The length of time prior to settlement is consistent with normal business and trade practice.
- (f) A political committee or candidate must file with this office a Statement of Settlement, which is subject to review, within 30 days of any such settlement. All Statements of Settlement must be signed by the Treasurer and Candidate of the political committee, and a duly authorized agent of the corporation.

(2) Noncorporate Debts. Debts to individuals or unincorporated proprietors not subject to M.G.L. c. 55, § 8 may be settled for less than the amount owed in the same manner as provided in 970 CMR 1.03(1), or by meeting each of the following requirements:

(a) The amount forgiven is set forth in a letter of forgiveness and when considered together with amounts contributed from the same individual, is no more than the amount said individual may contribute in accordance with M.G.L. c. 55 or 970 CMR.

(b) The political committee must report any debt which is forgiven as an in-kind contribution.

(3) Definition of "Liability". For purposes of M.G.L. c. 55, a "liability" is an obligation to make an expenditure which arises when a candidate or political committee, or person acting on behalf of a candidate or political committee, receives the proceeds of a loan or a good or service for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or opposing a question submitted to the voters, or is otherwise legally obligated to make a payment.

(4) Where a debt has been reported as a liability by a candidate or political committee for at least six years, and the candidate or committee does not have funds to make a payment and does not expect to have such funds available, or the creditor is no longer in business or cannot be located, an affidavit may be submitted to OCPF by the candidate or treasurer, to indicate that the liability is no longer in effect. In order for a debt to no longer be in effect after six years, the following requirements must be met:

(a) At the time the liability was incurred, the candidate and committee treasurer intended that the amount due would be paid in full;

(b) Credit was extended in the ordinary course of business similar to terms granted to other political and non-political debtors;

(c) The committee has made commercially reasonable efforts to satisfy the debt;

(d) To the best of the candidate or treasurer's knowledge, the creditor has pursued remedies to seek payment in the same manner it normally takes against debtors in a financial condition similar to the committee;

(e) To the best of the candidate or treasurer's knowledge, the goods or services provided by the creditor were not intended by the creditor as an in-kind contribution to the candidate or committee; and

(f) Payment on the full amount owed has not been made because the candidate or committee has no funds to make such payment and has no reasonable expectation of being able to make such payment in the future, or because the creditor is no longer in business or cannot be located.



Form CPF S-1: Statement of Settlement

CPF ID #: _____

Office of Campaign and Political Finance

(For Office Use)

Commonwealth of
Massachusetts

File with: Director
Office of Campaign and Political Finance
One Ashburton Place, Room 411, Boston, MA 02108

(617) 979-8300 / (800) 462-OCPF / Fax: (617) 727-6549
ocpf@cpf.state.ma.us
www.mass.gov/ocpf

**Please print or type all information, except signatures.
One form should be filed for debts settled with each creditor.**

Candidate's Name: _____

Treasurer's Name: _____
(if applicable)

Committee Name: _____
(if applicable)

In settling the debts noted below, I/we certify:

1. All liabilities of the candidate and/or the political committee, listed below, have been settled in accordance with 970 CMR 1.03:

<u>Date Incurred</u>	<u>To Whom Due</u>	<u>Amount</u>	<u>Date of Settlement</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

2. At the time the liability was incurred, I/we intended that the candidate/committee would pay in full for the goods or services rendered.

3. For debts to corporations or other entities subject to M.G.L. c. 55, s. 8:

- a. the credit was extended in the ordinary course of business on terms similar to those granted to other political and non-political debtors;
- b. the candidate and/or political committee has/have made commercially reasonable efforts to satisfy the debt;
- c. the creditor has pursued remedies to seek payment in the manner it normally takes against debtors in a financial condition similar to this candidate/political committee;
- d. the settlement is similar to others the creditor has made with other debtors, and similar to settlements the candidate/committee has proposed to its other creditors;
- e. the length of time prior to settlement is consistent with normal business and trade practice;
- f. the debt is not the subject of a dispute between the candidate/committee and the creditor involving questions of satisfactory delivery of goods or services, or the amount owed; and
- c. the goods or services provided by the creditor and/or by the extension of credit were not intended by the creditor to be an inkind contribution to the candidate/committee.

4. For debts to individuals or other entities such as sole proprietorships, that are not subject to M.G.L. c. 55, s. 8:

- a. the liability was settled in accordance with all the requirements of paragraph 3 (above); OR
- b. the amount forgiven, when considered together with amounts contributed from the same individual or entity, is no more than the amount said individual or entity may contribute in accordance with the campaign finance law.

I certify that the conditions specified above apply to each listed liability.

Signed under the penalties of perjury:

Date: _____

Candidate Signature

Date: _____

Treasurer Signature
(if applicable)

Date: _____

Creditor Signature
(authorized agent or officer)

NOTES

Who should file this form?

Any candidate or committee settling a debt for less than the amount owed. This form should be filed for the settlement of both corporate and non-corporate debts. One form should be filed for debts settled with each creditor.

When should this form be filed?

This form should be filed within 30 days of the settlement of the debt.

For further information:

Please contact the Office of Campaign and Political Finance at ocpf@cpf.state.ma.us or (617) 979-8300.